REMARKS

Applicant has carefully reviewed the Office Action of November 26, 2003 and the Advisory Action of February 26, 2004 and offers the following remarks to accompany the above amendments.

Initially, Applicant requests an indication that the references filed on August 3, 2001 as well as those filed on September 4, 2002 (which were resubmitted on February 2, 2004) have been considered. Both sets of references were filed as proper Information Disclosure Statements in a timely manner before the mailing date of the first office action, yet there is no record in the Office Actions that any of these references have been considered by the Examiner.

Applicant respectfully reiterates the arguments made in the response filed January 26, 2004 as if set forth in full herein. Specifically, the alliteration technique recited in the claims has not been shown by the Patent Office. In the Office Action of November 26, 2003, it is stated that this was merely the optimization of a result-effective variable. However, Applicant argued that no evidence has been shown by the Patent Office that the references recognize that changing color names is a result-effective variable. This evidence is required by the case law as argued in the previous response, and this point was not addressed in the Advisory Action. Applicant requests evidentiary support for the Patent Office's position that selecting color names is a result-effective variable such that optimization thereof is obvious. In the absence of such evidentiary support, the Patent Office has not met its burden and the claims are allowable.

Applicant has amended several claims to clarify further the nature of the invention. Claim 122 has been amended to recite that each note within a set of notes forming an octave group has a note name and a color assigned thereto. Each color has a color name and the color name alliterates with the corresponding note name. As previously argued, and as admitted by the Patent Office, the references of record, alone or in combination, do not teach or suggest alliteration, and further still, alliteration in the context of an octave group having at least seven notes. Since the Patent Office has provided no evidentiary support for the proposition that this is a result-effective variable, the Patent Office is not entitled to rely on optimization to fill in the gaps of the references. Since the element is not taught or suggested, the Patent Office has not established *prima facie* obviousness for claim 122 or its dependents. Since the Patent Office has not established *prima facie* obviousness, the claims are allowable.

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Claim 125 has been amended to recite that the pitch marks are distinct from the notes. The Patent Office has heretofore opined that Choong discloses pitch markings. However, as previously indicated, the Patent Office has not provided any indication of what element within Choong corresponds to the pitch marks recited in claim 125. Applicant has studied the reference and finds no element that identifies or denotes an octave group in which the musical note can be found. If the Patent Office disagrees, Applicant respectfully requests that the Patent Office identify with particularity what element so corresponds, preferably with a citation to column and line number. In the absence of such a citation, it is clear that the reference does not teach or suggest this element, and the Patent Office has not established *prima facie* obviousness. Since the Patent Office has not established *prima facie* obviousness, the claims are allowable.

Claim 138 has been amended to clarify further the nature of the note formation techniques in that the single note tone is formed by using a plurality of actuators. The Patent Office opines that this is shown by Figure 2 of Hoffman. However, Figure 2 of Hoffman is a piano keyboard and, as such, does not form single notes by a plurality of actuators. To this extent, Hoffman does not disclose the claim element, and the Patent Office has not established *prima facie* obviousness. Since the Patent Office has not established *prima facie* obviousness, the claims are allowable.

Claim 139 has been canceled to simplify issues.

Claim 143 has been amended in a manner similar to claim 122, and the Patent Office has not shown the alliteration as previously discussed. To this extent, claim 143 and its dependents are patentable.

Claim 148 has been amended in a fashion similar to claim 125 and is patentable for the same reasons.

Claim 165 has been amended to clarify what a structural component is. Applicant has studied the references and can find no teaching or suggestion in any of the references that suggests coloring the structural components. Further, Applicant submits that the Patent Office has not articulated where these elements can be found in the references. Specifically, the Patent Office has grouped claim 165 with claim 122, though the subject matter of the claims is substantially different. Since the Patent Office has not identified where in the references coloring the structural components is taught, Applicant is unable to address this point except to request

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that the Patent Office identify with particularity what portion of what reference teaches or suggests this element. In the absence of such evidence, the Patent Office has not established *prima facie* obviousness and the claim is allowable, as are its dependents.

Claim 168 has been amended to clarify further the nature of the key signature and the structural components. Again, the Patent Office has not identified where in the references these elements can be found. Rather, the Patent Office groups this claim in with claim 122 and provides no separate analysis despite very different claim elements. None of the references teach coloring the accidentals in the key signature. If the Patent Office disagrees, Applicant requests that the Patent Office identify with particularity which element within which reference teaches or suggests this claim element. In the absence of such evidence, the Patent Office has not established *prima facie* obviousness and the claim is allowable, as are its dependents.

Claim 172 has been amended to clarify the nature of the pitch marks and how they interact with the octave groups. Specifically, the pitch marks identify to which octave group a note belongs. As discussed above, Choong's markings do not function in this manner and therefore do not show the claim element. If the Patent Office disagrees, Applicant requests that the Patent Office identify with greater particularity what elements within Choong correspond to the recited pitch markings. In the absence of such evidence, the Patent Office has not established *prima facie* obviousness and the claim is allowable, as are its dependents.

New claims 177-180 provide some additional permutations of the subject matter of the instant invention. As Applicant has previously paid for 74 claims and the total claim count is now 58, no new fee should be required.

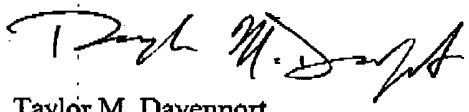
Conclusion

The Patent Office has not identified with sufficient particularity where in the references the claim elements can be found. Further, the Patent Office's presentations do not support its assertion that the selection of colors that alliterate is a result-effective variable that can be optimized. For these reasons, the Patent Office has not established *prima facie* obviousness and the claims are allowable. Applicant earnestly solicits claim allowance at the Examiner's earliest convenience.

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Respectfully submitted,

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